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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,603	11/16/2001	Howard A. Hardee	29002-11270	4747

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LEYDIG, VOIT & MAYER, LTD.
(SEATTLE OFFICE)
TWO PRUDENTIAL PLAZA
SUITE 4900
CHICAGO, IL 60601-6780

EXAMINER

HAWK, NOAH CHANDLER

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/998,603	Applicant(s) HARDEE ET AL.	
	Examiner Noah C. Hawk	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-48 and 51-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 51-54 is/are allowed.
- 6) ☒ Claim(s) 45-48, 55-64, 67-72 and 75-76 is/are rejected.
- 7) ☒ Claim(s) 65,66,73 and 74 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/7/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 46 is objected to because of the following informalities: the claim should end in a period. Appropriate correction is required.

Affidavits – 37 CFR 1.131

2. The affidavit of Timothy Holub filed on 11/7/05 under 37 CFR 1.131 is acknowledged and has been considered by the examiner. However, the Office reminds the applicant that the declaration is improperly listed in the IDS. A declaration filed under 37 CFR 1.131 should not be listed on an IDS.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 47 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 47 recites the limitation "the first and second side edges" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holub declaration of 11/7/05 in view of Krishnan in US Patent 5283112 and Dehner in US Patent 6154884. The Holub document teaches attaching two portions of a first sheet of fabric material so as to form a three-dimensional corner, the attachment of the two portions forming a seam and turning the three dimensional corner inside out to form an inverted three-dimensional corner but does not disclose a two-layer fabric material or the use of a second sheet of material to cover at least a portion of the seam. Krishnan teaches using a two-layer fabric material (see Krishnan, Column 16, line 46 "comprising a pair of fabric layers") to form a waterproof material but does not disclose the use of a second sheet of material to cover a seam. Dehner teaches the use of waterproof sealing tape (66) for covering the interior portion of a seam (see Figure 2) to prevent unwanted water penetration therethrough and increase the strength of the seam. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of the Holub declaration by using a two-layer fabric as taught by Krishnan in order to produce a waterproof corner and by attaching a second piece of material on the interior of the corner as taught by Dehner in order to further prevent water penetration through the corner and to increase the strength of the corner.

6. Claims 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub in view of Krishnan and Dehner as applied to Claim 45 above and further in view of Collins III in US Patent 5083644.

- a. Regarding Claim 46, Holub in view of Krishnan and Dehner teaches all of the limitations of Claim 45 as stated above, but does not disclose a first or second notch in the fabric material. Collins III discloses a fabric material for making a corner with notches (best seen in Collin III, Figure 3) defining side edges (41). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of Krishnan and Dehner by using a notch as taught by Collins III in order to provide a corner with a little wasted fabric as possible. It would be inherent when using a two layer fabric in a corner such as the one taught by Collins III, for a first layer to have first side edges and a second layer to have second side edges and for the two layers to have an attachment along the edges to prevent separation of the two layers.
- b. Regarding Claim 47, Holub in view of Krishnan and Dehner teaches all of the limitation of Claim 45 as stated above, but does not disclose that the attachment along the first and second side edges comprises stitching. Collins III discloses a corner structure formed by attaching portion of adjacent sidewalls together via stitching (see Collins III, Column 2, lines 29-30). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of Krishnan and Dehner by using an attachment method of stitching as taught by Collins III in order to provide a strong attachment means.
- c. Regarding Claim 48, Holub in view of Krishnan and Dehner teaches all of the limitations of claim 45 as stated above, but does not disclose that the corner comprises three sides. Collins III discloses a corner structure with three sides

(one is formed by the three sides 27, 29, and 35, for example). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of Krishnan and Dehner by using a three-sided corner as taught by Collins III in order to provide the most usable space as possible. It would be inherent in this device for the second layer of fabric material to extend over the exterior portion of each of the three sides of the inverted three-dimensional corner.

7. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holub declaration of 11/7/05 in view of Krishnan and Kubacki in US Patent 4519410. The Holub document teaches the construction of a corner for a floor tub, comprising attaching two portions of a first sheet of fabric material so as to form a three-dimensional corner, the attachment of the two portions forming a seam and turning the three dimensional corner inside out to form an inverted three-dimensional corner but does not disclose a two-layer fabric material or the attachment of walls of a tent or canopy. Krishnan teaches using a two-layer fabric material (see Krishnan, Column 16, line 46 "comprising a pair of fabric layers") to form a waterproof material but does not disclose the attachment of tent or canopy walls to the floor tub. Kubacki teaches the attachment of tent walls (22, 23) to a substantially waterproof tub floor (17). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub by using a two-layer fabric material as taught by Krishnan in order to produce a waterproof corner and to configure the fabric material so that a second layer

extends over an exterior portion of the inverted, three-dimensional corner and to attach tent walls to the tub floor as taught by Kubacki in order to form a complete tent.

8. Claims 56 and 59, 60, 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub in view of Krishnan and Kubacki as applied to Claim 55 above, and further in view of Collins III.

d. Regarding Claim 56, as stated above, Holub in view of Krishnan and Kubacki teaches all of the limitations of Claim 55, but does not disclose the arrangement of the excess materials in the corner. Collins III discloses a corner with the excess material (41) for the two portions at the seam extend adjacent to one another and on an exterior of the corner before turning inside out and on an interior of the corner after turning the corner inside out (best seen in Collins III, Figure 4). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of Krishnan and Kubacki by arranging the excess materials for the two portions on an interior portion of the corner after turning it inside out in order to provide a clean seam along the outside of the corner.

e. Regarding Claim 59, as stated above, Holub in view of Krishnan and Kubacki teaches all of the limitations of Claim 55, but does not disclose that the two portions are attached by stitching. Collins III discloses a corner structure formed by attaching portion of adjacent sidewalls together via stitching (see Collins III, Column2, lines 29-30). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of

Krishnan and Kubacki by using an attachment method of stitching as taught by Collins III in order to provide a strong attachment means.

f. Regarding Claim 60, Holub in view of Krishnan and Kubacki teaches all of the limitations of Claim 55 as stated above, but does not disclose a first or second notch in the fabric material. Collins III discloses a fabric material for making a corner with notches (best seen in Collin III, Figure 3) defining side edges (41). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of Krishnan and Kubacki by using a notch as taught by Collins III in order to provide a corner with a little wasted fabric as possible. It would be inherent in a corner such as the one taught by Collins III that when using a two layer fabric, a first layer would have first side edges and a second layer would have second side edges and for the two layers to have be aligned along the edges, especially if the two-layer fabric had been cut as a single piece so that both layers were cut at the same time.

g. Regarding Claim 61, Holub in view of Krishnan and Kubacki teaches all of the limitations of claim 55 as stated above, but does not disclose that the corner comprises three sides. Collins III discloses a corner structure with three sides (one of which is formed by the three sides 27, 29, and 35). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of Krishnan and Kubacki by using a three-sided corner as taught by Collins III in order to provide the most usable space as possible. It would be inherent in this device for the second layer of fabric material to extend

over the exterior portion of each of the three sides of the inverted three-dimensional corner.

9. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holub in view of Krishnan, Kubacki and Collins III as applied to Claim 56 above, and further in view of Dehner. As stated above, Holub in view of Krishnan, Kubacki and Collins III teaches all of the limitations of Claim 56, but does not disclose the use of a second sheet of material. Dehner teaches the use of waterproof sealing tape (66) for covering the interior portion of a seam (see Figure 2) to prevent unwanted water penetration therethrough and increase the strength of the seam. Dehner further teaches the arrangement of the excess materials (64) to one side of the seam. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of Krishnan, Kubacki and Collins III by arranging the excess material to one side and by attaching a second piece of material as taught by Dehner on the interior of the corner in order to further prevent water penetration through the corner and to increase the strength of the corner.

10. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holub in view of Krishnan and Kubacki as applied to Claim 55 above, and further in view of Dehner. Dehner teaches the use of waterproof sealing tape (66) for covering the interior portion of a seam (see Figure 2) to prevent unwanted water penetration therethrough and increase the strength of the seam. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of Krishnan and Kubacki by attaching a second piece of material as taught by Dehner on the interior

of the corner in order to further prevent water penetration through the corner and to increase the strength of the corner.

11. Claims 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub in view of Krishnan, Kubacki and Collins III as applied to Claim 61 above, and further in view of Dehner. As stated above, Holub in view of Krishnan, Kubacki and Collins III teaches all of the limitations of Claim 61, but does not disclose the use of a second sheet of material. Dehner teaches the use of waterproof sealing tape (66) for covering the interior portion of a seam (see Figure 2) to prevent unwanted water penetration therethrough and increase the strength of the seam. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub in view of Krishnan, Kubacki and Collins III by attaching a piece of waterproof sealing tape as taught by Dehner on the interior of the corner in order to further prevent water penetration through the corner and to increase the strength of the corner.

12. Claims 67 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub in view of Krishnan and Kubacki as applied to Claim 55 above. As stated above, Holub in view of Krishnan and Kubacki teaches all of the limitations of Claim 55, but does not explicitly disclose the tent made by the disclosed process. It would have been obvious to one of ordinary skill in the art at the time of invention to make a tent with at least one corner formed in accordance with the method of Claim 55 and to further make a tent wherein each corner is formed in accordance with the method of Claim 55 in order to provide a tent with a significantly waterproof tub floor.

13. Claims 69-72 and 75-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub in view of Krishnan, Kubacki, Dehner and Collins III.

h. Regarding Claim 69, the Holub document teaches the construction of a corner for a floor tub, comprising attaching two portions of a sheet of fabric material so as to form a three-dimensional corner, the attachment of the two portions forming a seam and turning the three dimensional corner inside out to form an inverted three-dimensional corner but does not disclose a two-layer fabric material, a notch in the material, the use of a second sheet of material or the attachment of walls of a tent or canopy. Krishnan teaches using a two-layer fabric material (see Krishnan, Column 16, line 46 "comprising a pair of fabric layers") to form a waterproof material but does not disclose the use of a notched sheet, the use of a second sheet, or the attachment of tent or canopy walls to the floor tub. Collins III discloses a fabric material for making a corner, the fabric material having a notch cut between two portions to define two inner edges (41) along which the two portions are attached, but does not disclose the use of a second sheet or the attachment of tent or canopy walls to the floor tub. Dehner teaches the use of waterproof sealing tape (66) for covering the interior portion of a seam (see Figure 2) to prevent unwanted water penetration therethrough and increase the strength of the seam, but does not teach the attachment of tent or canopy walls to the floor tub. Kubacki teaches the attachment of tent walls (22, 23) to a substantially waterproof tub floor (17). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Holub by

using a two-layer fabric material as taught by Krishnan in order to produce a waterproof corner and to configure the fabric material so that a second layer extends over an exterior portion of the inverted, three-dimensional corner, to use a sheet of fabric with two portions having a notch therebetween as taught by Collins III in order to minimize the waste of fabric used to construct the tub floor, to use a second sheet of material as taught by Dehner to seal the interior of the inverted, three-dimensional corner in order to further prevent water penetration through the corner and to increase the strength of the corner and to attach tent walls to the tub floor as taught by Kubacki in order to form a complete tent.

i. Regarding Claims 70-72, Holub in view of Krishnan, Kubacki, Dehner and Collins III teach all of the limitations of Claim 69. Dehner further teaches that the second sheet of material comprises a waterproof sealing tape (66) that is heat bonded/welded to the seam (see column 4, lines 11-18).

j. Regarding Claims 75-76, Holub in view of Krishnan, Kubacki, Dehner and Collins III teach all of the limitations of Claim 69 but does not explicitly disclose the tent made by the disclosed process. It would have been obvious to one of ordinary skill in the art at the time of invention to make a tent with at least one corner formed in accordance with the method of Claim 69 and to further make a tent wherein each corner is formed in accordance with the method of Claim 69 in order to provide a tent with a significantly waterproof tub floor.

Allowable Subject Matter

14. Claims 51-54 are allowed.
15. Claims 65, 66, 73, and 74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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1/17/05

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